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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,654

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Bruno Vedrine

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EXAMINER

OGUNBIYI, OLUWATOSIN A

ART UNIT

PAPER NUMBER

1645

NOTIFICATION DATE

DELIVERY MODE

08/19/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com
IPMatters@arentfox.com
Patent_Mail@arentfox.com

Office Action Summary	Application No. 10/529,654	Applicant(s) VEDRINE ET AL.	
	Examiner OLUWATOSIN OGUNBIYI	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This application is now docketed to Art Unit 1645.

Claims 1-20 are pending in the application.

The reply to the restriction requirement mailed 5/15/08 is acknowledged. However, upon further consideration, all three previous restriction requirements are vacated. A new restriction requirement is set forth below.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-17, drawn to a method for detecting and counting the microorganisms in a sample comprising the steps of:

a) selectively enriching the microorganism sought in the sample, b) conditioning said microorganism, c) immunomagnetically concentrating the conditioned microorganism, d) fluorescently labeling the concentrated microorganism, and e) detecting and analyzing the fluorescence.

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Group II, claim(s) 18-20, drawn to a selective enrichment medium for a microorganism sought in a sample comprising: a nutrient composition making the multiplication of said organism possible, and a selective revivification composition for said microorganism, wherein it comprises:

sodium pyruvate at a concentration selected from the group consisting of between 1 and 20 g/L, between 1 and 10 g/L, and between 4 to 6 g/L,

sodium thiosulfate at a concentration selected from the group consisting of between 0.5 and 5 g/L, between 0.5 and 3 g/L, and approximately 2 g/L,

catalase at a concentration selected from the group consisting of between 500 and 20,000 I J/L, between 2,000 and 8,000 g/L, and approximately 5,000 u/L.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature of Group I is drawn to a method for detecting and counting the microorganisms in a sample comprising the steps of:

a) selectively enriching the microorganism sought in the sample, b) conditioning said microorganism, c) immunomagnetically concentrating the conditioned microorganism, d) fluorescently labeling the concentrated microorganism, and e) detecting and analyzing the fluorescence.

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The technical feature of Group II is a selective enrichment medium for a microorganism sought in a sample comprising: a nutrient composition making the multiplication of said organism possible, and a selective revivification composition for said microorganism, wherein it comprises: sodium pyruvate at a concentration selected from the group consisting of between 1 and 20 g/L, between 1 and 10 g/L, and between 4 to 6 g/L, sodium thiosulfate at a concentration selected from the group consisting of between 0.5 and 5 g/L, between 0.5 and 3 g/L, and approximately 2 g/L, catalase at a concentration selected from the group consisting of between 500 and 20,000 I J/L, between 2,000 and 8,000 g/L, and approximately 5,000 u/L.

Groups I and II do not share the same technical feature. Group II does not teach the technical feature of Group I which comprises a) selectively enriching the microorganism sought in the sample, b) conditioning said microorganism, c) immunomagnetically concentrating the conditioned microorganism, d) fluorescently labeling the concentrated microorganism, and e) detecting and analyzing the fluorescence.

In addition, the technical feature of Group I is anticipated by Pyle et al (WO 95/31481, November 23, 1995, cited in IDS). Pyle et al teach a method for detecting and counting (enumerating) respiring microorganisms in a liquid sample comprising selectively enriching the microorganisms in said sample by mixing immunomagnetic beads comprising an antibody which specifically binds to said microorganism, conditioning said microorganism by allowing said microorganism to interact and thus bind to said antibody on said immunomagnetic bead, immunomagnetically concentrating the conditioned microorganism which is now bound to said immunomagnetic bead, fluorescent labeling bacteria on the bead with a fluorescent stain or

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fluorescent conjugated antibody and detecting and analyzing the fluorescence (see p. 85 claim 12).

Notice of Possible Rejoinder

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained.

Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double

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patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Species Election

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Group I:

Substrate part – fatty acid, monosaccharide, phosphate or sulfate.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLUWATOSIN OGUNBIYI whose telephone number is 571-272-9939. The examiner can normally be reached on M-F 8:30 am- 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, either of the examiner's Supervisors, Shanon Foley (571-272-0898) or Robert Mondesi (571-272-0956) can be contacted.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Oluwatosin Ogunbiyi/

Examiner, Art Unit 1645

/Patricia A. Duffy/

Primary Examiner, Art Unit 1645